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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,935	02/12/2004	Thomas E. Zion	56689.US	5479
408	7590	05/02/2006	EXAMINER	
LUEDEKA, NEELY & GRAHAM, P.C. P O BOX 1871 KNOXVILLE, TN 37901			BALSIS, SHAY L	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,935

Applicant(s)

ZION, THOMAS E.

Examiner

Shay L. Balsis

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,7,9,18 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,7,9,18 and 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 7, 9, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wildgen (US D194374).

Wildgen teaches an apparatus comprising a cleaning structure having a first and second diverging cleaning members (two prongs), where each cleaning member has an inner edge, an outer edge and a terminal end. There is a shaft (portion between 8-8 and 6-6 on figure 2) having a proximal end and a distal end, wherein the distal end transitions into the cleaning structure. The cleaning structure and the shaft are integrally formed from a single and continuous piece of material.

With regards to claim 3, the shaft has a circular cross-section (figure 6).

With regards to claim 7, the terminal end of each cleaning member is arcuately shaped (figure 3 and 4).

With regards to claim 9, the cleaning structure is disposed at a first angle relative to the shaft (figure 2).

With regards to claim 18, there is further a handle proximal the end of the shaft (portion between 6-6 and 5-5 on figure 1).

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Claims 1, 3, 7, 9, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Harper (US D177807).

Harper teaches an apparatus comprising a cleaning structure having a first and second diverging cleaning members (two prongs), where each cleaning member has an inner edge, an outer edge and a terminal end. There is a shaft (portion between 5-5 and 6-6 on figure 1) having a proximal end and a distal end, wherein the distal end transitions into the cleaning structure. The cleaning structure and the shaft are integrally formed from a single and continuous piece of material.

With regards to claim 3, the shaft has a circular cross-section (figure 5).

With regards to claim 7, the terminal end of each cleaning member is arcuately shaped (figure 2).

With regards to claim 9, the cleaning structure is disposed at a first angle relative to the shaft (figure 1).

With regards to claim 18, there is further a handle proximal the end of the shaft (portion between 6-6 and 8-8 on figure 1).

Claims 1, 3, 7, 9, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wallance (US D210318).

Wallance teaches an apparatus comprising a cleaning structure having a first and second diverging cleaning members (two prongs), where each cleaning member has an inner edge, an outer edge and a terminal end. There is a shaft (portion between prongs and 4-4 on figure 1) having a proximal end and a distal end, wherein the distal end transitions into the cleaning

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structure. The cleaning structure and the shaft are integrally formed from a single and continuous piece of material.

With regards to claim 3, the shaft has a circular cross-section (figure 4).

With regards to claim 7, the terminal end of each cleaning member is arcuately shaped (figure 1).

With regards to claim 9, the cleaning structure is disposed at a first angle relative to the shaft (figure 2).

With regards to claim 18, there is further a handle proximal the end of the shaft (portion between 4-4 and 5-5 on figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23, 25-26, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wildgen ('375) or Harper ('807) or Wallance ('318) in view of Sassone et al. (PGPub 2002/0093210).

Wildgen, Harper or Wallance teach all the essential elements of the claimed invention including a flattened distal end of a shaft and an arcuate scraping edge between the prongs, however fails to teach a handle with a central bore for receiving a proximal end of the shaft (claim 23 and 25). All the references teach a handle formed unitary with the shaft. Sassone teaches a utensil with a wood handle attachment (12). The handle is substantially cylindrical and

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has a central bore extending there through. The bore is adapted to receive a shaft member of the utensil ([0017]). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use a handle not integral with the shaft because Applicant has not disclosed that using a separate handle provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with an integral handle as taught by Wildgen, Harper or Wallance or the claimed separate handle with a bore for receiving the shaft because both handles perform the same function of allowing the user to grip the utensils equally well. Therefore, it would have been obvious to one of ordinary skill in the art to modify Wildgen, Harper or Wallance to obtain the invention as specified in claims 23 and 25.

With regards to the limitation that the shaft is made from steel, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Wildgen, Harper or Wallance utensil so that it is made from steel, since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416 MPEP 2144. Additionally, stainless steel is a common material used for serving utensils since it is easy to clean and maintain.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wildgen ('375) or Harper ('807) or Wallance ('318) in view of Bouchakian (USPN 4771541).

Wildgen, Harper or Wallance teach all the essential elements of the claimed invention however fail to teach that the cleaning structure and shaft are formed from a single piece of forged steel. Bouchakian teaches a utensil made from stainless steel and formed by forging (col.

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4, lines 46-54). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Wildgen, Harper or Wallance utensil so that it is made from forged steel, since it has been held within the general skill of a worker in the art to select a know material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416 MPEP 2144.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wildgen ('375) or Harper ('807) or Wallance ('318) in view of Sassone all further in view of Bouchakian (USPN 4771541).

Wildgen, Harper or Wallance in view of Sassone teach all the essential elements of the claimed invention however fail to teach that the cleaning structure and shaft are formed from a single piece of forged steel. Bouchakian teaches a utensil made from stainless steel and formed by forging (col. 4, lines 46-54). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Wildgen, Harper or Wallance utensil so that it is made from forged steel, since it has been held within the general skill of a worker in the art to select a know material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416 MPEP 2144.

Response to Arguments

Applicant's arguments with respect to claims 1-22, filed 3/14/04 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L. Balsis whose telephone number is 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Slb
4/26/06



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